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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 FRANCISCO JAVIER FRANCO,

14 Defendant.
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Case No. 2:09-CR-00508-KJD-LRL

ORDER

16 Presently before the Court is Defendant's Motion for Pretrial Determination of Defense Issue
17 (#23). Plaintiff filed a response in opposition (#24).

18 Defendant seeks a determination that robbery in violation of 18 U.S.C. §1951 is a specific
19 intent crime. Having read and considered Defendant's motion and Plaintiff's opposition, the Court
20 denies the motion. Though the Ninth Circuit has not directly addressed this issue, the Court finds no
21 reason to depart from the reasoning of the Eleventh Circuit Court of Appeals which specifically
22 rejected an attempt to impose a specific intent requirement for a Hobbs Act robbery. See United
23 States v. Thomas, 8 F.3d 1552, 1563 (11th Cir. 1993).

24 Furthermore, 18 U.S.C. § 924 (c)(1)(A)(i) has no *mens rea* requirement. See Smith v. United
25 States, 508 U.S. 223 (1993)(phrase "in relation to" found in § 924 (c)(1)(A) does not embody a *mens*
26 *rea* requirement); Dean v. United States, 129 S.Ct. 1849 (2009)(clause (ii)'s *mens rea* requirement is

1 drawn from a different section of the statute, § 924 (c)(4); and clause (iii) contains no *mens rea*
2 requirement); United States v. Gonzalez, 520 U.S. 1, 5 (1997); see also, Russello v. United States,
3 464 U.S. 16, 23 (1983)(“Where Congress includes particular language in one section of a statute but
4 omits it in another of the same Act, it is generally presumed that Congress acts intentionally and
5 purposely in the disparate inclusion or exclusion”). The Court recognizes that 18 U.S.C. § 924
6 (c)(1)(A)(ii) is a sentencing factor to be found after a violation of the statute itself has been found,
7 and that the voluntary intoxication defense would be appropriately considered at that point.

8 Accordingly, **IT IS HEREBY ORDERED** that Defendant’s Motion for Pretrial
9 Determination of Defense Issue (#23) is **DENIED**.

10 DATED this 13th day of September 2010.

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14 Kent J. Dawson
15 United States District Judge
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